

MEMORANDUM OF LAW

DATE: September 19, 1988

TO: Rich Snapper, Personnel Director

FROM: City Attorney

SUBJECT: Special Leave Without Pay and Long-Term  
Disability

You recently sent to this office a memorandum describing several apparent conflicts between the provisions of the Civil Service Commission rules describing Special Leave Without Pay and the various provisions of The City of San Diego's Long-Term Disability ("LTD") Program. You expressed a particular concern over the possible negative impact these conflicting provisions may have on City employees, especially those employees who take a leave of absence while pregnant but before becoming totally disabled (within the meaning of section 4.01 of the LTD Plan Document) as a result of the pregnancy. In preparing to answer your six questions, we reviewed the LTD Plan Document and consulted with the staff of the Risk Management Department in order to ensure that our analysis of the Plan Document reflected actual current Plan interpretations provided by the Plan Administrator.

QUESTION NO. 1:

If an employee takes a Special Leave Without Pay, is he/she eligible for Long-Term Disability benefits?

ANSWER TO QUESTION NO. 1:

Participation in the LTD Program is directly related to the individual's status as an "eligible employee," described in section 2.05 of the LTD Plan Document as follows:

ELIGIBLE EMPLOYEE shall mean employees who are working full time, 3/4 or 1/2 time on a salary basis or covered under the Employer's

payroll, and they are categorized as General Members, Safety Members, Legislative Officers, and other Unclassified Employees as follows:

General Member means any employee who is not a safety member and makes contributions to The City of San Diego's City Employees Retirement System (hereinafter referred to as "CERS") or the 1981 Pension System;

Safety Member means any employee

who contributes to CERS or the 1981 Pension System who is either a regular sworn officer of the Police Department of the Employer, a uniformed member of the Fire Department of the Employer, or a full-time employed lifeguard of the Employer; provided, however, that Police Cadets, persons sworn for limited purposes only, and all other members of the Police and Fire Department and Lifeguard Service shall not be considered Safety Members for the purposes of this article;

Legislative Officers who are eligible to participate in the Legislative Officers' Retirement Plan (hereafter referred to as "LORP"); and

Unclassified Employees are also eligible for plan participation whether or not they participate in CERS or the 1981 Pension System.

All employees who are eligible for the plan prior to the effective date of the Plan are automatically covered under the Plan on such date, all other employees will join the Plan twelve (12) consecutive months after they first become Eligible Employees.

The 12-month eligibility waiting period is waived for occupational disability.

¶Emphasis added.σ

In addition, section 3.01 has special provisions for participants who are on a medical leave of absence or a nonmedical leave of absence. That section reads as follows:

3.01 Participation shall continue for as long as the Participant remains an Eligible Employee. Participation shall continue while a Participant is on a medical leave of absence of up to thirty (30) days. Participation shall not be deemed continuous if an Eligible Employee is on a non-medical leave of absence. Participation shall cease upon termination of employment or absence of more than 30 days on a leave of absence unless such termination or leave of absence is due to Total Disability as

defined in Section 4.01.

For the purpose of this section Plan participation will cease on the day the Participant fails to return to active employment as scheduled.

We will describe the reasons for the above rule in our answer to Question No. 3. However, we do note that the Plan Administrator interprets section 3.01 to authorize LTD benefits for otherwise qualified employees who go on Special Leave Without Pay after becoming pregnant but prior to the pregnancy becoming currently disabling because of the unique provisions of California Government Code section 12945 mandating disability benefits for pregnancy. Therefore, an employee's right to LTD benefits is not dependent on the employee's leave status per se but on the employee's eligibility as defined above.

**QUESTION NO. 2:**

Would an employee be eligible for Long-Term Disability if he/she were in a "Red A" payroll status (unpaid leave) and had not applied for Special Leave Without Pay through the Civil Service Commission?

**ANSWER TO QUESTION NO. 2:**

The Plan Administrator, who is charged with interpreting the Plan Document by section 7.06 of the Plan Document, does not distinguish between "Red A" (unpaid leave) or Red "K" (unauthorized leave) status and Special Leave Without Pay for the purposes of determining eligibility and participation within the

meaning of those terms as set forth in sections 2.05 and 3.01 of the Plan Document. However, if an appointing authority terminates an employee for excessive absenteeism or job abandonment, the former employee is no longer eligible for benefits under section 2.05 except when the absence is due to total disability as defined in section 4.01.

**QUESTION NO. 3:**

If an employee takes a Special Leave Without Pay, and during that time becomes disabled from work, can the employee be eligible for LTD benefits by withdrawing the leave? If this is possible, what is the employee's status with the City when the leave is withdrawn?

**ANSWER TO QUESTION NO. 3:**

If an employee becomes totally disabled, as defined in section 4.01 of the LTD Plan Document, within the first thirty days of a Special Leave Without Pay, the employee is still eligible for participation in LTD. If the employee is on Special Leave Without Pay in excess of thirty days, the leave must have

originally been taken because of the impending qualifying medical disability in order for the employee to be eligible for LTD benefits. As we indicated previously, this includes pregnancy. The reason for this is that the LTD Plan, as a self-funded insurance plan, was designed from its inception to reduce the City's risk of liability by excluding from coverage employees who are absent from work in excess of thirty days while in the pursuit of non-City related affairs. In other words, an employee, who is on a Special Leave Without Pay for more than thirty days and whose leave is not due to total disability as defined in section 4.01, is not eligible to apply for LTD benefits if he or she becomes disabled while on leave until the employee returns to work and satisfies the 12-month eligibility waiting period as set forth in section 2.05 except in the case of pregnancy pursuant to section 12945 of the California Government Code. Remember section 2.05 states that the 12-month eligibility waiting period is waived for occupational disabilities. Withdrawal of leave and return to work has no effect by itself on the employee's LTD eligibility status.

QUESTION NO. 4:

Should time spent on a Special Leave Without Pay be considered a break in service for Long-Term Disability purposes, since a Special Leave is not considered a break in service for other programs?

ANSWER TO QUESTION NO. 4:

Special Leave Without Pay and the Long-Term Disability Program are two separate and distinct employee benefits with different goals, purposes and costs. An employee, who is on a Special Leave Without Pay, may purchase employer provided benefits (such as health insurance) while on such leave. Under certain conditions an employee may purchase creditable service in the retirement system if the employee complies with the provisions of section 24.0313 of the Municipal Code. Because of the design of the LTD program, the cost of coverage is not assessed to the employee as a benefit. The employee does not make a contribution for LTD benefit eligibility nor does The City of San Diego make a contribution on the employee's behalf. Coverage is solely dependent on the employee's participation and eligibility status under the Plan Document. To avoid confusion, the term "break in service" should be avoided when describing an employee's participation and eligibility status under the LTD Plan Document.

QUESTION NO. 5

Is time spent in "Red A" status, where an employee has not

applied for Special Leave Without Pay, also be considered a break in service for Long-Term Disability purposes?

ANSWER TO QUESTION NO. 5:

Same as the response to Question No. 2.

QUESTION NO. 6:

Since the provisions of these two programs appear to operate at cross purposes, which program takes precedence?

ANSWER TO QUESTION NO. 6:

As we have indicated above, Long-Term Disability and Special Leave Without Pay are separate but sometimes related benefits provided by The City of San Diego for its employees. As with any employee benefit, different conditions for eligibility may be required for each program. Neither program takes precedence over the other as both programs have described benefits and standards of eligibility that are distinct and separate from the other program.

#### SUMMARY

Special Leave Without Pay and the Long-Term Disability Program are two very important benefits for City of San Diego employees. Employees who desire to take advantage of them must be aware of the limitations of each program in order to avoid an unnecessary loss of benefits. If it appears that employees are losing benefits because they do not fully understand the eligibility requirements for those benefits, we suggest that the Personnel Department and the City Manager's office develop a method of coordinating and interfacing requests for Special Leave Without Pay for medical reasons with the procedures for requesting and qualifying for LTD benefits. Hopefully, such a procedure will resolve any unnecessary future problems.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:mmm

310:314:(x043.2)

ML-88-85